IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.457 OF 2004

The Commissioner of Income Tax ..Appellant.

V/s.

Nari Hira ..Respondent.

Mr.R.G.Bhat with P.S.Sahadevan for appellant.

Ms.Vasanti B.Patel for respondent.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 15TH OCTOBER, 2007.

P.C. :-

1. The Commissioner of Income Tax, Mumbai has filed this appeal under section 260A of the Income Tax Act, 1961 against the order of the I.T.A.T. dated 1/8/2003 relating to the block assessment period 1990-91 to 1999-2000. According to the C.I.T., the following question of law arising out the order of the Tribunal :-

> " Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in quashing the order passed by the C.I.T. under section 263 of the Act and holding that there was no justification on the part of the jurisdictional C.I.T. to invoke the provisions of section 263 for the revision of the block assessment order ? "

2. On 11/2/2000 there was a search and seizure

action under section 132 of the Income Tax Act ('the Act' for short) in the case of M/s.Magna Group of Companies in which Smt.Mohini Hiranandani, since deceased represented by the legal heir Shri Hari Nira ('the assessee' for short) was one of the Directors of the Company. The search resulted in seizure of incriminating documents. Thereupon notices were issued under section 158 BC of the Income Tax Act, 1961 ('Act' for short) to the Company as also the assessee. Thereupon, the Company filed Settlement Petition before the Settlement Commission offering undisclosed income of more than Rs.6 crores including the amount of Rs.1.55 crores being unexplained investment in the flats in Suraj Co-operative Housing Society and the expenditure of Rs.1.20 crores being the unexplained expenses spent on the interior decorations of the said flats. As the Settlement Petition was pending, the assessing officer completed the assessment in the case of the assessee by making the additions of Rs.1.55 crores being the unexplained investment in the flats in Suraj Co- operative Housing Society Ltd. and Rs.60 lakhs (50% of Rs.1.20 crores) being unexplained expenses incurred by the assessee in interior decorations of the said flat on protective basis.

3. The Commissioner of Income Tax, however, was of the opinion that the assessment was perjudicial to

the interest of the revenue and accordingly, after invoking the provisions of section 263 of the Act held that the amount of Rs.2.15 crores (Rs.1.55 crores plus Rs.60 lakhs) was liable to be taxed on substantive basis in the hands of the assessee. The C.I.T. further held that a sum of Rs.3,34,20,000/- claimed by the assessee as security deposit was liable to be taxed in the hands of the assessee as deemed income under section 2(22)(e) of the Act.

4. Being aggrieved by the aforesaid order, the assessee filed an appeal before the I.T.A.T. and the Tribunal has set aside the order passed by the C.I.T. under section 263 of the Act. Hence this appeal at the instance of the revenue.

5. As regards the additions of Rs.2.15 crores is concerned, it is a fact admitted by the assessing officer as well as the C.I.T. that the amount of Rs.6 crores offered by the Company as undisclosed income includes the amount of Rs.2.15 crores sought to be treated as undisclosed income of the assessee. Admittedly, the Settlement Petition filed by the Company has been allowed and the same has been accepted by the revenue. Therefore, taxing the said amount of Rs.2.15 crores once again in the hands of the assessee does not arise at all.

6. As regards the addition of Rs.3,34,20,000/- is concerned, the finding recorded by the Tribunal is that the said amount represents the security deposit received by the assessee for hiring her flat No.131 at Somerset House, Bhulabhai Desai Road, Mumbai for the use of the Company for their business purposes and the said amount has also been shown as security deposit in the balance sheet of the Company for the year ending 31st March, 1998. This finding of fact is not disputed by the revenue. However, it is contended by the revenue that the assessee has 2/9th share in the flats in Suraj Apartments and, therefore, the amount of Rs.3,34,20,000/- represents the deemed divided under section 2(22)(e) of the Act. This argument is misconceived, because, it is not in dispute that the flat No.131 at Somerset House, Bhulabhai Desai Road, Mumbai belongs to the assessee and the same has been let out to the Company on receipt of security deposit. Accordingly, the finding recorded by the Tribunal that the security deposit received by the assessee cannot be taxed as income of the assessee deserves acceptance.

7. For the aforesaid reasons, we are of the opinion that the finding recorded by the Tribunal is a finding of fact and no question of law arise out of the order of the Tribunal. Accordingly, appeal

is dismissed with no order as to costs.

(J.P.DEVADHAR, J.) **(F.I.REBELL0, J.)**